

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ANDREW HARLEY SPEAKER,)

Plaintiff,)

vs.)

U.S. DEPARTMENT OF HEALTH)

AND HUMAN SERVICES)

CENTERS FOR DISEASE)

CONTROL AND PREVENTION,)

Defendant.)

CIVIL ACTION FILE NO:
1:09-CV-1137 (WSD)

**DEFENDANT'S AMENDED STATEMENT OF MATERIAL
FACTS ABOUT WHICH THERE IS NO GENUINE DISPUTE**

Pursuant to Local Rule 56.1(B)(1), N.D. Ga., the United States Department of Health and Human Services Centers for Disease Control and Prevention (collectively, the “defendant”) respectfully substitutes paragraphs 3, 20 and 33 of the CDC’s July 2, 2009 Statement of Material Facts for the following:¹

¹ In response to Plaintiff’s contention that the transcript of the CDC’s May 30, 2007 media briefing that the CDC submitted in support of its summary judgment motion contained transcription errors, see dkt no. 7-2 (Rule 56(f) Affidavit of Craig Jones, ¶10) (citing CDC SJ Ex. C), on August 3, 2009, the CDC filed with the Court (and provided to Plaintiff’s counsel), a videotaped recording of both the May 29 and May 30, 2007 media briefings. See Dkt. No. 15 (Defendant’s Notice Of Manual Filing). Accordingly, the CDC respectfully amends the support for its Statements of Material Fact numbers 3, 20 and 33 to reflect the videotaped recordings of these two media briefings, and incorporate by reference the remaining Statements of Material Facts filed by the CDC on July 2, 2009 (Dkt. No.

3. Neither Dr. Gerberding nor any other employee of the CDC identified Mr. Speaker by name at the May 29, 2007 press briefing. See Declaration of Bryon Skinner and Attachments, Dkt. No. 15.

20. Neither Dr. Gerberding nor any other CDC official had revealed the fact that the patient was scheduled to undergo surgery and other treatment at National Jewish Medical Center in Denver at the May 29, 2007 press briefing. See Declaration of Bryon Skinner and Attachments, Dkt. No. 15.

33. Plaintiff's name was not revealed at the May 30 press briefing. See Declaration of Bryon Skinner and Attachments, Dkt. No. 15.

5-2).

Respectfully submitted,

TONY WEST
Assistant Attorney General

DAVID E. NAHMIAS
United States Attorney

/s/Neeli Ben-David
NEELI BEN-DAVID
Assistant United States Attorney
Georgia Bar No. 049788
600 Richard Russell Building
75 Spring Street, S.W.
Atlanta, GA 30303
Tele: (404) 581-6000
Fax: (404) 581-6150

JOHN R. TYLER
Assistant Branch Director
Federal Programs Branch

/s/Joshua E. Gardner
JOSHUA E. GARDNER
Trial Attorney
Federal Programs Branch
20 Massachusetts Avenue, NW
Washington, D.C. 20530
Tele: (202) 305-7583
Fax: (202) 616-8202
Joshua.E.Gardner@usdoj.gov

Attorneys for Defendant

CERTIFICATE OF COMPLIANCE

I certify that the document to which this certificate is attached has been prepared with one of the font and point selections approved by the Court in LR 5.1B (Times New Roman, 14 pt.) for documents prepared by computer.

This 10th day of August, 2009.

/s/Joshua E. Gardner

CERTIFICATE OF SERVICE

I certify that on this day, I electronically filed the foregoing
DEFENDANT'S AMENDED STATEMENT OF MATERIAL FACTS ABOUT
WHICH THERE IS NO GENUINE DISPUTE with the Clerk of Court using the
CM/ECF system, which will automatically send email notification of such filing to
the following attorneys of record:

Craig T. Jones
Page Perry, LLC
1040 Crown Pointe Parkway
Suite 1050
Atlanta, GA 30338

This 10th day of August, 2009.

/s/Joshua E. Gardner